UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

CASCADES CONTAINERBOARD PACKAGING – PISCATAWAY, A DIVISION OF CASCADES HOLDINGS US INC.

and **Case 22-CA-240134**
22-CA-246892
22-CA-256957

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC

Joanna Pagones Ross, *Esq.*,
for the General Counsel.

Ian B. Bogaty, Esq. and *Henry S. Shapiro*, *Esq.* (Jackson Lewis, PC) of Melville, New York,
for the Respondent.

Brad Manzolillo, Esq. and *Katharine Shaw*, *Esq.*,
for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

BENJAMIN W. GREEN, Administrative Law Judge. This case concerns the alleged obligation of the Respondent to recognize and bargain with the Charging Party Union as the bargaining representative of a unit of production and maintenance employees at the Respondent's Piscataway, New Jersey facility.[1] On March 20, 2019,[2] a neutral third-party conducted a count of authorization cards collected by the Union and determined that a majority of the unit employees signed cards designating the Union as their bargaining representative. After the card count, Piscataway Human Resources Manager Alex Fowlie signed an agreement recognizing the Union as the bargaining representative of the Piscataway unit.

The General Counsel contends that the Respondent violated Section 8(a)(5) and (1) of the Act by, after March 20, refusing to recognize and bargain with the Union as the exclusive bargaining representative of the unit. The General Counsel further contends that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide information

[1] In this decision, Cascades Containerboard Packaging – Piscataway, a Division of Cascades Holding US, Inc. is referred to as the "Respondent" and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO/CLC is referred to as the "Union" or "USW." The Union has numbered district and local subdivisions, which are referred to by their number (e.g. Local 381).

[2] All dates herein refer to 2019, unless stated otherwise.

requested by the Union in letters dated March 25, March 21, 2019, and February 13, 2020.[3]

The Respondent defends against the complaint allegations on the grounds that Fowlie was not an agent with authority to enter into the March 20 recognition agreement and that it did not otherwise agree to be bound by the results of the card check. The Respondent does not defend against the information request allegations on alternative independent grounds. Accordingly, the parties stipulated that, to the extent the Respondent is obligated to recognize and bargain with the Union as the bargaining representative of the Piscataway unit, the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the bargaining representative of the unit. (J. Exh. 13)

For the reasons discussed below, I find that the Respondent violated the Act as alleged in the complaint.

This case was tried before me by Zoom video conference on February 22 and 23, 2021. On the entire record, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs that were filed by the General Counsel and the Respondent, I make these

FINDINGS OF FACT[4]

JURISDICTION

The Respondent admits, and I find, that it has engaged in the manufacture and nonretail sale of corrugated packages at a facility in Piscataway, New jersey, and during the 12-month period ending May 23, sold and shipped from its Piscataway facility goods valued in excess of $50,000 directly to points outside the State of New Jersey. The Respondent further admits, and I find, that at all material times, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and the Board has jurisdiction pursuant to Section 10(a) of the Act.

[3] The Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the complaint) issued on April 30, 2020. Thereafter, the General Counsel withdrew the unfair labor practice allegations in paragraphs 17–21 of the complaint. (G.C. Exh. 1(r), (v), (w))

[4] The Findings of Fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I rely upon witness demeanor. I also consider the context of the witness' testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions and witnesses may be credited in part. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), rev'd. on other grounds 340 U.S. 474 (1951)).

ALLEGED UNFAIR LABOR PRACTICE

Background

The Respondent designs, manufactures, and sells corrugated containerboard packaging at facilities in the U.S. and Canada. (Tr. 268, 270) Until August 2017, the Respondent maintained a production facility in Maspeth, New York (Queens). USW Local 381 represented a unit of shipping, production, and maintenance employees at the Maspeth facility. Local 381 and the Respondent were parties to a collective-bargaining agreement which reflected the status of Local 381 as the recognized bargaining representative of the Maspeth unit. USW District 4 Staff Representative Luke Gordon was assigned to administer the Maspeth contract in March 2015. In August 2017, the Respondent sold the Maspeth facility and began construction of a new plant to replace it in Piscataway, New Jersey. The Piscataway facility began hiring and production in May 2018. (Tr. 28–31, 268–272)

Mathieu Cote is the Respondent's Regional human resources manager. Cote is responsible for three sales offices and nine production facilities, including four production facilities in the U.S. (Piscataway, New Jersey; Lancaster, New York; Newton, Connecticut; and Schenectady, New York). (Tr. 269–270) The Lancaster facility has long employed union represented employees.[5] Each of these production facilities has a local human resources manager. These local human resources managers report to Cote and communicate information from Cote to employees. Cote was a local human resources manager at three plants before assuming his current position in 2007. Cote directs local human resource managers on how to manage issues that arise in various situations, including training, benefits, payroll, and labor relations. Cote participates in collective bargaining. He is also the company's representative in arbitrations and other legal matters related to human resources and labor relations. Cote testified that the Respondent's relationship with Local 381 at Maspeth was a good one. (Tr. 269, 272–273)

Fowlie has been the human resources manager of the Piscataway facility since September 2017, when he was interviewed and hired by Cote. Cote trained Fowlie after hiring him. (Tr. 211, 268–270, 307, 313) (G.C. Exh. 4) Fowlie testified that he learned what he was authorized to do over time as Cote trained him. Fowlie did not recall Cote telling him what tasks he was not authorized to perform. (Tr. 371) Fowlie's job responsibilities include drafting, signing, and issuing discharge and disciplinary letters to employees. Fowlie's correspondence, in this regard, serves as the Respondent's only written record of disciplinary actions and are kept in the subject employees' personnel files. Fowlie testified that he merely signs these disciplinary letters "as a witness" because it is the employee's immediate supervisor or the plant production manager who actually make the disciplinary determination. (G.C. Exh. 11–12) (Tr. 223–230, 256–258)

The Voided Piscataway Collective-Bargaining Agreement

Upon learning that the Respondent intended to close the Maspeth plant and move the operation to Piscataway, Local 381 filed a grievance asserting that the Maspeth collective-bargaining agreement covered work transferred to Piscataway because it was within 75 miles of the Maspeth plant. The parties resolved this grievance by negotiating a new collective-bargaining agreement covering the Piscataway facility, which was signed on June 7, 2018, for a

[5] I take administrative notice of this fact as found in *Cascades Containerboard Packaging – Lancaster, a Division of Cascades New York, Inc.*, 367NLRB No. 115 (Apr. 22, 2019).

term from January 16, 2018, to December 31, 2023. (G.C. Exh. 6) (Tr. 31) Article 2 of the new Piscataway contract recognized Local 381 as the bargaining representative of the following unit (G.C. Exh. 6) (Tr. 324–325):

> The Company recognizes the Union as the exclusive collective bargaining agent of all Production and Maintenance employees employed at its Piscataway, New Jersey location only, for all mandatory subjects of bargaining (wages, hours, and conditions of employment), excluding all other employees and locations, some examples of those excluded (but not limited to those listed) are: managers; administrators; supervisors; guards; sales employees; technicians; transportation; office and clerical employees; and those employees with access to Company financial, human resources, or labor relations information.

Cote and U.S. Regional General Manager Craig Griffith negotiated the new Piscataway contract on behalf of the Respondent. Gordon and Local 381 President Generoso DiChiara negotiated those agreements on behalf of Local 381. (Tr. 49, 70, 273) (G.C. Exh. 6)

Gordon testified that he met Fowlie on a few occasions close in time to when the parties signed the Piscataway contract.[6] On one occasion, Gordon introduced Fowlie to two employees who had been selected by Local 381 to act as shop stewards. On a couple other occasions, Fowlie was present when Gordon and DiChiara toured the facility. Finally, Gordon dealt with Fowlie in connection with a discharge grievance. (Tr. 35–36) Fowlie denied he knew or had any dealings with any Union representatives until March 20. (Tr. 346)

A week or 2 after the Piscataway contract was signed, Gordon learned that the International Union of Operating Engineers, Local 68 (Operating Engineers) was attempting to organize the Piscataway facility and soliciting union authorization cards from employees. Gordon testified that Cote notified him of the Operating Engineers' activity during a call in which Fowlie was on the line. Gordon told Cote that Local 381 and the Operating Engineers were both affiliated with the AFL-CIO and subject to a no-raiding agreement. Gordon then conveyed this information to the Union's district director in order to stop the Operating Engineers from organizing in light of the new Piscataway collective-bargaining agreement. Thereafter, the Operating Engineers stopped its organizing activity at the Piscataway facility. (Tr. 33–34, 36)

On August 9, 2018, a Piscataway employee filed unfair labor practice charges against the Respondent (Case 22-CA-225389) and Local 381 (Case 22-CB-225412). These charges included allegations that Local 381 unlawfully claimed recognition and the Respondent unlawfully recognized Local 381 as the bargaining representative of the Piscataway unit at a time when Local 381 did not have majority support among unit employees. (G.C. Exhs. 9–10)

On November 28, 2018, the Acting Regional Director of Region 22 approved an informal settlement agreement of cases 22-CA-225389 and 22-CB-225412. The settlement agreement required that a "responsible official" of each charged party sign a Notice to Employees, which would be posted for 60 days. (G.C. Exh. 7) The notice for case 22-CA-225389 stated in part, "**WE WILL NOT** deduct union dues on behalf of Local 381 United Steel Workers [or] any other labor organization without their support of a majority of the employees." (G.C. Exh. 8) The notice for case 22-CB-225412 stated in part, "**WE WILL NOT** request that Cascades or any

[6] Gordon testified that this occurred in June 2017, but the contract was actually signed in June 2018. Gordon testified that he initially met Fowlie when the parties executed the contract and Fowlie gave him a business card. (Tr. 35) (G.C. Exh. 6)

other Employer deduct union dues from employees pay checks on behalf of Local 381 United Steel Workers without the support of a majority of the employees we seek to represent." (R. Exh. 1) The letter from Region 22 to the parties, enclosing the notices for signature and posting, was addressed to Fowlie as the Respondent's representative. (R. Exh. 1)

On December 11, 2018, Fowlie signed the notice in case 22-CA-22538 and, next to his signature, listed his title as "HR Manager." (G.C. Exhs. 8)

As a result of the settlement, the Piscataway contract was rescinded and rendered void. (Tr. 31, 275) However, Gordon advised Cote that the Union intended to represent the Piscataway unit and would solicit enough authorization cards from unit employees to demonstrate a majority. (Tr. 32–33) Gordon admitted he did not specifically ask Cote for "voluntary recognition" (using those exact words). However, Gordon credibly testified that he told Cote the Union wanted a card check done by a neutral third party and then to negotiate a new contract. Gordon explained to Cote that the Respondent and Union have had a successful relationship over the years and the continuation of that relationship would avoid the disruption and conflict which might arise as a result of an election. In particular, Gordon expressed concern and sought to avoid a situation where another union intervened in an election. Gordon noted that other unions would want to organize the Piscataway plant, but asserted that the USW understood the paper industry better than other unions. Cote was amenable to a card count instead of an election and told Gordon, "that would be good." (Tr. 67) Cote also agreed that the Respondent would remain neutral while the Union solicited authorization cards from employees.[7] (Tr. 31–33, 65–69, 79–80, 275–277, 313–314, 316–317)

In late-December 2018, a shop steward told Gordon that the UAW was soliciting authorization cards from employees of the Piscataway facility. On January 18, the UAW filed a petition to represent a unit of Piscataway employees. Gordon initially testified that Fowlie called and asked him what the union was going to do about the UAW's campaign. According to Gordon, he advised Fowlie that the Union would proceed in the same way as it did earlier that year with regard to the Operating Engineers. That is, the Union would explain its interest in the Piscataway Unit and attempt to stop the UAW from pursuing representation. Upon further examination, Gordon testified that he spoke with Cote (not Fowlie) about the UAW petition. Cote testified that he told Gordon about the UAW petition, but that Gordon was already aware and planned to deal with it internally through the AFL-CIO. The UAW ultimately withdrew its petition. (Tr. 36–37, 70–73, 277–278)

From December 2018 to February, Gordon communicated with Cote regarding the number of employees the Respondent had hired in order to determine how many authorization cards the Union needed to obtain to establish majority support. (Tr. 37–38, 279) Union organizers Arturo Achila and Brian Callow collected the signed authorization cards from Piscataway unit employees during this period. (Tr. 147–149, 185–187)

Between March 5 and March 18, Gordon and Cote exchanged the following text messages (G.C. Exh. 2):

[7] Cote admitted that Gordon probably told him the Union was still interested in representing the Union and would begin collecting authorization cards. Cote also admitted that the Respondent agreed to remain neutral rather than campaign against Union representation. However, Cote denied that Gordon mentioned anything about a card check until March 2019. (Tr. 316–317) As addressed in the credibility section of this decision, I credit Gordon over Cote in this regard.

Gordon (March 5, 8:38 PM): Mathiew, can you share with me what the current headcount is? Thanks, Luke.

Cote (March 6, 3:54 PM): 130 now.

Gordon: Thanks

Gordon (March 7, 3:53 PM): Would it be possible for your guys in Piscataway to stop hiring more people just for a short time? We're almost there, but you keep moving the target. Thanks, Luke.

Gordon (March 11, 6:05 PM): Can you give me a call when you can talk?[8]

Cote (March 17, 11:01 AM): Got your message. I talked to Alex and he will be there on Monday to count with you and maybe to tell you which one are from active/terminated employees. We will discuss next step with our colleagues early this week and get back to you. Thank you.

Gordon (March 17, 2:35 PM): Mathieu, if you don't mind, I'd like to reach out to the Federal Mediation & Conciliation Service (FMCS), which is a neutral Government agency, and see if they might have any of their Commissioners who might be available to do the actual card count. That way it's strictly on the up & up, and none can accuse either side of doing anything inappropriately. Normally, I would just count with Alex, but given the past history with the Labor Board (which the FMCS is *no* part of), I think we might want to err on the side of caution. Thoughts?

Cote (March 17, 4:53 PM): I don't see downsides.

Gordon: I'll make it happen.

Gordon (March 18, 10:07 AM): Earnest Whelan, the Executive Secretary of the NJ State Board of Mediation is available to come to the plant Wednesday at 10:30am to do the card check. If this works for you and/or Alex, please confirm. Thanks. Luke

Cote (March 18, 1:16 PM): We have 5 new employees to start Wednesday if they pass medical. I have 127 hourly in system now but I asked Alex to double check.

Gordon: Mathieu, I was able to change the time to later on Wednesday. The mediator asks that you have in alphabetic order whatever documents you will be providing to verify signatures. He will be there at 3:00 pm, as well as a Representative of the Union.

Cote (March 18, 3:56 PM): 130 now. +5 on Wednesday.

[8] Cote had a vague recollection of a call with Gordon around this time in which Gordon asked that the company stop hiring so a majority was not a moving target. Cote recalled telling Gordon the Respondent could not stop hiring because the operation was ramping up. Gordon did not recall having such a conversation. (Tr. 40–41, 282–283)

At trial, Cote was asked to explain his understanding of Gordon's March 17 text reference to the "past history with the Labor Board." Cote answered, "[t]o me that was a reference to the discussion and the settlement that happened after the NLRB complaint in the fall of the previous year, basically of 2018." (Tr. 291) Cote also understood that, as a result of the settlement, the Union would not represent Piscataway employees and the Piscataway contract would be rescinded. (Tr. 275–276, 316–317)

Respondent's counsel also asked Cote to explain what he meant by the statement in his Sunday, March 17 text, "[w]e will discuss next step with our colleagues early this week and get back to you." Cote testified as follows (Tr. 289):

> A. Well, for me it was really an internal process of the USWU. So after, Luke would have reach out to me and tell me what would be the count, and what would be the majority, was it a vast majority, was it a small majority. And then we would have other discussion, Luke and I.
>
> Q. So what if anything would you have spoken with your colleagues about after the cards, after this March 20, 2019, review?
>
> A. I was saying to my colleagues basically that the USW were at a point where they wanted to make verification of their cards and that we were going to have more discussion in the upcoming weeks.

Gordon asked FMCS Commissioner Guy Serota to conduct the card check, but Serota advised him that the agency was not currently doing such counts. Serota suggested Earnest Whelan, the executive secretary of the New Jersey State Board of Mediation, as an alternative. Serota contacted Whelan and the card check was scheduled to be held at the Piscataway facility on March 20. (Tr. 41–46)

Cote testified that, before March 20, he had never been involved in a card check and did not know a card check could result in union recognition. (Tr. 286–287) According to Cote, prior to March 20, he thought a card count was merely an "internal" process to confirm the Union's majority. (Tr. 305–306, 320–321) Although Cote initially testified that he would never have agreed to recognize the union as a result of the card check, he subsequently testified (as discussed below) to the contrary. (Tr. 287, 328, 331)

On Wednesday, March 20, the card check was conducted. Neither Cote nor Gordon attended the count. Union Sub-District Director Michael Fisher, Achila, and Callow were present for the Union. Fowlie was present for the Respondent. Whelan was present to conduct the count. Serota attended as well. Fowlie brought an alphabetized list of unit employees and Achila brought the authorization cards. The employee list and authorization cards were provided to Whelan. (Tr. 110–119, 167–174, 188–196, 349–361)

The testimonial accounts of the card check were not entirely consistent. According to the Union representatives, Fowlie requested that the cards be verified by comparing signatures on the cards to signatures on personnel records, such as W-4 forms. Fowlie denied that he requested such verification and, instead, testified that Whelan asked him to produce signed personnel records which could be used to verify the signatures on the cards. It is undisputed that Fowlie did not have verification records with him when he entered the room. According to Fowlie, he first told the group he was unaware of the need to verify signatures and needed to call Cote, which he did. Cote claimed he was initially surprised by the Union's request for

signature verification,[9] but agreed to the production of redacted personnel records as it made sense to verify the authenticity of the signatures on the cards. Fowlie testified that he then proceeded to collect personnel documents with signatures and redact sensitive information. Fowlie returned to the conference room where the card check was taking place about 20–30 minutes after he left. (Tr. 153–154, 295–296, 350–353)

Before the count was conducted, Whelan asked the parties to sign the following document, which he had prepared in advance (Tr. 111–114, 192,) (J. Exh. 2):

> We, the undersigned parties to a card check conducted under the Auspices of the New Jersey State Board of Mediation, hereby declare:
>
> 1. No other union has shown any interest in the bargaining unit herein involved within the past calendar year.
>
> 2. There has been no election, card count or demand for recognition from any other union in the past calendar year for the bargaining unit herein involved.

Fowlie signed the document "For the Employer" and Fisher signed the document "For the Union." (J. Exh. 2) Fowlie admitted that he was aware, when he signed this document, that the UAW had filed a petition 2–3 months earlier and that, accordingly, declaration number 1 was incorrect. However, Fowlie testified that he did not read it closely, did not know what to "show interest" meant, and ultimately signed the document because Whelan said it was just to acknowledge a card check occurred. (Tr. 355–359) Fisher testified that he did not believe declaration number 1 was incorrect because the UAW was, at the time of the card count, no longer interested in representing the Respondent's employees. (Tr. 143)

Whelan asked Fowlie to leave the conference room during the count to protect the identity of employees who signed cards. Fowlie left the conference room as requested and closed the door. Fowlie could not hear what was said in the room with the door closed, but could see into the room because the walls were glass. (Tr. 353–353) Whelan then conducted the card count and Fowlie was invited back inside. Whelan announced that he counted 68 valid signatures out of 70 cards and handwrote the results on a tally document he had prepared in advance for that purpose. (Tr. 115–117) (J. Exh. 3)

After the card count was complete, Fisher gave Fowlie the following "Card Check Agreement" and said the agreement was supposed to be executed if the results of the count were in favor of the Union (Tr. 116–117) (J. Exh. 3):

> **Card Check Agreement**
>
> This Agreement, dated March 20, 2019, is entered into by and between Cascades, Inc., hereinafter called the "Company", and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, (also known as the USW), hereinafter called the "Union".

[9] In a March 18 text to Cote, Gordon stated, "The mediator asks that you have in alphabetic order whatever documents you will be providing to verify signatures." (G.C. Exh. 2)

> The Company and the Union hereby agree that on March 20, 2019, a mutually acceptable neutral determined that a majority of the employees in the bargaining unit described below signed authorization cards stating their desire to designate the Union as their exclusive representative for collective bargaining purposes. Therefore, the Company hereby recognizes the Union as the exclusive bargaining representative for all employees in the following bargaining unit:
>
> > All full-time and regular part-time Production and Maintenance Employees employed by the Company at its facilities located at Turner Place in Piscataway, New Jersey; excluding professional and confidential employees, and supervisors as defined by the National Labor Relations Act.

The Union representatives testified that, when presented with this document, Fowlie said he did not know he was supposed to sign anything and left the room. According to the Union representatives, Fowlie then returned to the room and repeated that he did not know he was supposed to sign anything. However, Fowlie signed the agreement. (Tr. 113–117, 133–134, 156–157, 172–174, 194–195)

Fowlie denied he left the room after the card count and testified as follows regarding what happened after Fisher asked him to sign the Card Check Agreement (Tr. 359–361:

> I started to kind of scan the document. And I said what exactly is this to the room, all six other representatives in the room. And I said I'm uncomfortable, I'm not really sure. I was told I was not supposed to sign anything,[10] so I'm not really sure what this is or why I need to sign this. . . . The response I received was I was just told to give this to you and that you need to sign it. But then I again repeated that I'm uncomfortable, because I'm not sure what this even is and why I would be signing something. I was told I had to sign. . . . (Tr. 359–360)
>
> Then I basically turned to the mediator, Ernest Whalen, who was sitting to my left. I said can you provide some clarity onto what this is, because I'm not familiar with this piece of paper at all. . . . (Tr. 360)
>
> He simply responded saying it's just a standard acknowledgement of the card check. And he didn't elaborate on that. After an additional pause and saying I was uncomfortable again, I ultimately signed the document. (Tr. 361)

Fowlie signed the Card Check Agreement "For the Company" and handwrote "Cascades" next to his signature. (J. Exh. 1) In advance of the card check, Cote did not tell Fowlie whether he had authority to sign this agreement. That is, Cote did not tell Fowlie he had authority to sign such an agreement and did not tell Fowlie he did not have authority to sign such an agreement. (Tr. 318–319)

[10] I credit the Union representatives to the extent they testified that Fowlie said he did not know he was supposed to sign anything. I do not credit Fowlie's testimony that he said he was told, before the count, he was not supposed to sign anything. Cote testified that he did not expect documents to be signed and admitted that he did not tell Fowlie he could not sign the recognition agreement. (Tr. 285, 294–295, 318-319) Likewise, I do not credit Fowlie to the extent he claimed he told the Union representatives he felt "uncomfortable" signing the agreement.

Fowlie testified that he was puzzled when he walked outside after the card check and saw the Union representatives celebrating. Therefore, Fowlie called Cote and explained the situation. Cote told Fowlie to email him the documents that were signed after the count. Cote testified that, upon seeing the recognition agreement, he instructed Fowlie to do whatever he could to contact the people who attended the meeting and rescind his signature. Fowlie testified that Cote instructed him to reach out to Fisher and Whelan, "and explain the concern about the documentation." (Tr. 302, 363–364)

On Thursday, March 21, Fowlie attempted to reach Fisher at his office, but was advised that Fisher would be out until Monday, March 25. Fowlie attempted to call Whelan the same day, but did not reach him until March 22. When he did reach Whelan, Fowlie "explained to him that there was some concerns about the second document that was signed and I didn't really fully understand what exactly it was." Whelan advised Fowlie to talk to Fisher. Fowlie then reported back to Cote. Cote told Fowlie he needed to speak with legal counsel. (Tr. 364–365)

On March 25, at 4:45 p.m., Cote and Gordon had the following text exchange:

> Cote: Hi Luke. Craig and I would like to talk to you and Del Vitale (we negotiated with him the Piscataway agreement) tomorrow or Wednesday. Tomorrow anytime after 10am or Wednesday before 10am if possible. Can you? Should I send a quick email to Del to ask?
>
> Gordon: You should check with Del – he may be on the road. Are you looking to meet in person or one the phone? I have a board meeting 8am to 10:30am Wednesday, but tomorrow I'm fairly flexible.
>
> Cote: Just over the phone will be good. I'll email both you and Del right away. Thank you.
>
> Gordon: Ok.
>
> Gordon: I just got off the phone with Del – 10am Tomorrow will be fine.

On March 25, at 5:23 p.m., Fowlie sent Fisher the following email and copied Whelan and Serota (J. Exh. 12):

> I attempted to reach you in your office on Thursday, March 21, 2019 with some concerns over the card count meeting the day before on 3/20. I was told you were out of the office until Monday, March 25 My understanding going into the meeting was for a card count only and nothing was going to be signed on that day. The two forms signed that day, the card check agreement and mediation form, raised some concerns about the language in them. I spoke with Mr. Whelan on Friday, March 22 about my concerns. After further consideration and speaking internally with my superiors, I am officially rescinding my signature from both documents. Decisions made on behalf of Cascades in relation to the USW need authorization from senior management above my role in the Piscataway plant.

By letter dated March 25 from Gordon to Cote, the Union requested bargaining, bargaining dates, and information, as follows (J. Exh. 4):

> On Wednesday, March 20, 2019, NJ Board of Mediation Executive Secretary Ernest Whelan certified that a majority of Production & Maintenance employees,

> employed by Cascades at their Piscataway NJ plant, had signed cards requesting Union Membership and Collective Bargaining Representation by the United Steelworkers. Accordingly, I am hereby requesting to bargain with the Company over the Wages, Hours and Working Conditions of the above mentioned Bargaining Unit. Please provide dates that you, or your representative will be available to meet with myself and the Union Bargaining Committee.
>
> Additionally, request is hereby made for information which will be necessary for the Union in its role as Bargaining Agent, to wit:
>
> 1. An employee census, showing the names, classification, department, shift, date of hire, and rate of pay of all employees in the above-mentioned Bargaining Unit.
> 2. Copies of all OSHA Log 300, 300A and 301 forms for the period that the facility has been operating.
> 3. A listing of all employees who have been separated from employment, with the reason for separation, during the period December 1, 2018 to present.
> 4. Copies of Health Insurance Plans, Retirement Plans, and Thrift Plans (401-K, Employee Stock Ownership Plans, etc.) currently being offered to Bargaining Unit Employees.
> 5. Shift schedules for the next three months.

On March 26, Cote, Griffin, Gordon, and Union representative Del Vitale participated in a conference call. Cote and Griffin complained that the Respondent had not agreed to voluntary recognition of the Union. Griffin said he made certain commitments to people hired from January to March that the Piscataway facility would be nonunion. Gordon responded that the parties agreed to a card count instead of an election because it would minimize disruption to the facility and allow them to quickly obtain a contract without another union intervening. (Tr. 48–50, 86–87, 304–306) Cote testified as follows with regard to the March 26 call (Tr. 304–305):

> Clearly, we were not satisfied with the way it went on that day. And because Alex was unable to reach anyone from USW, I wanted Luke and his boss, Del Vitale, that we already had negotiated with him before, to be with Craig and myself on a conference call. . . . clearly, Alex, when he called me that evening, he felt pushed. He felt -- and I think by not reviewing the document before, we didn't know that anything wanted to be -- needed to be signed. I felt really not good about the fact I was not aware of any signature that there were going to be needed for that day. . . . It was not a good call. We were really upset, Craig and I. And when we said to Del and -- Del and Luke that there was nothing said about recognition, it was supposed to be just verification of cards, then they started to be very defensive and say, no, this is not what we wanted. This is Alex signed it and that's it.

On April 15, Gordon sent Cote a letter in which he asserted that the March 20 recognition agreement was binding and withdrawal of recognition was prohibited. The Union also reiterated its previous requests for bargaining dates and information. (J. Exh. 5)

On April 24, Cote sent Gordon a letter which stated as follows (J. Exh. 6):

> We write in response to your letter dated March 25, 2019. Before addressing your requests, we believe it would be useful to provide some background information.

> In or around March 2019, Cascades Containerboard Packaging – Piscataway ("Cascades") learned that the United Steelworkers ("USW") claimed to have received authorization cards from a majority of Cascades's employees. As you know, we exchanged messages on March 17 and 18 regarding the use of a neutral third party mediator to oversee the review of authorization cards possessed by the USW. I advised you that I did not see a downside to a neutral party overseeing the review process and agreed to your proposal. We agreed to hold the review of the authorization cards at the Cascades plant on March 20, 2019. Further, I advised you I could not attend but would allow my Piscataway Human Resources Manager, Alex Fowlie, to act as Cascades's employee at the review.
>
> At all relevant times, Cascades acted under the premise that the review of authorization card signatures would merely act as an informal poll to determine the level of support for the USW. Once equipped with this information, Cascades would consider meeting with the USW regarding representation of Cascades's employees if the review of authorization card signatures revealed a strong employee hunger for the USW's representation. It was never the intent of Cascades for the review of authorization card signatures to act as a formal, binding card check. For that reason, Cascades only provided a list of employee names and did not originally provide signature comparison documentation to verify the authorization card signatures. Further, Cascades never insisted on its representative being present for the review of authorization card signatures because it never intended the March 20 proceeding to act as a binding "card check."
>
> Based on the information provided to Mr. Fowlie, the March 20 proceeding revealed that 68 of 133 (or 51% of) eligible employees allegedly signed authorization cards in support of the USW. Now, equipped with these slim margins, coupled with a lack of clarity and transparency with regard to what local union would allegedly represent Cascades's employees, we wholly believe recognition of the USW is not in the best interests of Cascades's employees. Based upon the feedback received from several employees, a secret ballot NLRB-run vote is the only fair and equitable way to allow our employees (without any undue influence) to decide whether they want union representation.

Cote testified that he would have considered voluntarily recognizing the Union as the bargaining representative of the Piscataway unit at some point after March 20 if the card check demonstrated that the Union had a "vast majority." (Tr. 328) When Cote was asked when he decided the Respondent would rather have an election than voluntary recognition, he testified, "[i]t was prior to [the April 24 letter] that we decided that the right -- after what happened on March 20th, that the right way for people to know and to really be informed of what is the representation of the USW, we felt that it was best to have an election." (Tr. 328) Cote further testified that he was primarily troubled by the Union's failure to show him the recognition agreement before asking Fowlie to sign it after the count. (Tr. 328–331) According to Cote, "[w]hat troubled me . . . was more the process of not showing me the documents before asking for a signature, not providing Mr. Fowlie with a right explanation of what he was signing. This is what to me was troubling. If you're asking me what troubled me during that process, it was mainly that." (Tr. 331)

On April 23, the Union filed an unfair labor practice charge alleging that the Respondent unlawfully withdrew its March 20 recognition and refused to bargain with the Union. (G.C. Exh. 1(b)) On April 29, the Respondent filed a representation petition in case 22-RM-240442 based upon the Union's claim of recognition. (G.C. Exh. 3) However, the processing of that petition was blocked by the unfair labor practice charges. (Tr. 307) (G.C. Exh. 3) When Cote was asked at trial why the Respondent filed the petition, he testified as follows (Tr. 306–307):

> Because all along from the beginning this is what we wanted. We wanted employee[s] to have free choice, to be able to know what they are voting and what they are signing. And we felt strongly that a petition and an election – not petition, but an election was the right process to give the employees free choice.

On May 21, Gordon sent Cote a letter requesting the following information (J. Exh. 7):

1. A listing of all employees, including their name, address, date of hire, job title.
2. A separate list of all employees who have been separated from employment, with the reason for separation, during the period March 20, 2019 to present, including the information requested in item 1.
3. A separate list of all employees who have been hired into the Bargaining Unit since March 20, 2019.

In a May 23 email, Cote rejected the Union's May 21 request for information and asserted that the Respondent had no obligation to bargain with the Union. (J. Exh. 8)

On February 13, 2020, Gordon sent Cote a letter which demanded bargaining and requested the following information (J. Exh. 9):

1. A list of all bargaining unit employees separated from employment since March 20, 2019 with the reason(s) for the separation, including employee name(s), address(s), date(s) of hire, and job title(s).
2. A list of all bargaining unit employees who have been disciplined since March 20, 2019, with the reason(s) for the discipline, including employee name(s), address(s), date(s) of hire, and job title(s).
3. A list of all employees who have been hired into the bargaining unit since March 20, 2019, including employee name(s), address(s), date(s) of hire, and job title(s).

Respondent attorney Ian B. Bogaty responded to Gordon by letter dated February 26, 2020 and reiterated that the Respondent did not believe it had an obligation to bargain with the Union or produce information. (J. Exh. 11)

CREDIBILITY

In this section, I make the following findings and observations regarding credibility.

In terms of demeanor, Gordon was the most credible witness and Fowlie was the least credible. Gordon appeared to answer questions in a fair, spontaneous, and neutral manner regardless of the nature of the question or who was asking it. He appeared to be dedicated to the function of acting as an unbiased fact witness as opposed to an advocate. Conversely, on cross examination, Fowlie often failed to answer the specific question asked and, instead, answered in a manner designed to diminish the legal consequence of the question. Unlike Gordon, Fowlie seemed determined to obtain a legal outcome and was less dedicated to the function of his role as an unbiased fact witness.

I also found Cote less credible than Gordon in that he (Cote) appeared to take the witness stand with the objective of presenting a narrative that was not accurate. In particular, Cote testified that he believed the card check was simply an internal union function and that the Respondent always intended to determine the extent of Union support through the Board's election process. (Tr. 284, 287–289, 305–307, 320) However, the Respondent did, in fact, voluntarily recognize Local 381 as the bargaining representative of the Piscataway unit when it signed the Piscataway contract. Cote also admittedly knew the Union began collecting authorization cards in order to cure that legal defect (i.e., the absence of Union majority support) which served to void the Piscataway contract. In a March 17 text to Cote, Gordon specifically proposed that the parties "err on the side of caution" and have a "neutral government agency" conduct the card check "given the past history with the Labor Board." Cote understood that this reference to "the past history with the Labor Board" was a reference to the unfair labor practice charges which served to void the initial Piscataway contract and recognition provision therein. Cote also designated Fowlie as a Respondent representative at the card check. Thus, Cote did not understand the card check to be an "internal Union" procedure, but a procedure involving the Respondent and a third party for the specific purpose of insulating the next voluntary recognition from legal challenge.[11]

I do not credit Cote to the extent he testified that, before March, he did not know a card check could be used as a method of demonstrating the Union's majority status. The Respondent makes much of the fact that Cote is a Canadian resident who had not previously participated in a card check. However, Cote is the Regional human resources manager with responsibility for multiple facilities in the U.S., including the facility in Lancaster, New York. The Respondent has long employed union represented employees in Lancaster and, in Cote's capacity as regional human resources manager, he is responsible for labor relations and related legal proceedings at that facility. (Tr. 269–273) In late-2018, Cote was involved in the settlement of charges which concerned the legal requirement that the Union have majority support. Meanwhile, Gordon credibly testified that, following the settlement, he explained to Cote why a card check was preferrable to and should be used in place of an election.

Ultimately, Cote admitted that he contemplated voluntary recognition of the Union after the card check. In an April 24 letter, Cote indicated that he contemplated meeting with the Union "regarding representation of Cascade employees if the review of authorization card signatures revealed a strong employee hunger for the USW's representation." (J. Exh. 6) Cote confirmed in his testimony that he would have considered voluntarily recognizing the Union as the bargaining representative of unit employees at some point after the March 20 if the card check demonstrated the Union had a "vast majority." The narrative that Cote initially sought to present in his direct testimony – i.e., the Respondent always wanted an election and never contemplated voluntary recognition as a result of an "internal" Union card check – was a hyperbolic construct which works against his general credibility.

As noted above, I credit Gordon's testimony that, after the November 2018 settlement of cases 22-CA-225389 and 22-CB-225412, he advised Cote that the Union intended to solicit enough authorization cards to demonstrate its majority support in a card count and then

[11] Relatedly, I did not find Cote and Fowlie credible in their claim that they did not expect the March 20 card count to be a formal process where personnel records were used to verify employee signatures on the authorization cards. By text on March 18, Gordon expressly told Cote, "The mediator asks that you have in alphabetic order whatever documents you will be providing to verify signatures." (G.C. Exh. 2)

negotiate a contract. I also credit Gordon's testimony that he explained to Cote that a card count would avoid any disruption of the parties' relationship or intervention by a different union in an election. Likewise, I credit Gordon's testimony that Cote agreed to this arrangement. I find Gordon's testimony particularly plausible because the Union always wanted a contract containing voluntary recognition (not an election) and the Respondent did, in fact, voluntarily recognized Local 381 in the original Piscataway contract. The parties were only thwarted in this endeavor by the absence of a showing of Union majority support, which could be cured by the card check they agreed to conduct. In his text exchange with Cote, Gordon specifically referenced the card check as a way of avoiding the parties "past history with the Labor Board." That is, the card check would establish the Union's majority and allow the parties to sign a valid contract (unlike the voided Piscataway agreement) with a provision for voluntary recognition.

I also credit Gordon in his testimony that he had certain dealings with Fowlie prior to the card count. Gordon was, in general, more credible than Fowlie. Further, in the March text exchange between Gordon and Cote, the two discussed "Alex" without using his last name or identifying his position. These texts suggest that Gordon was already familiar with Fowlie. Further, Cote did not testify that, before this text exchange, he talked to Gordon about Fowlie. Rather, Gordon appeared to have a prior, independent familiarity with "Alex."

Finally, as discussed above (supra fn. 11), I do not credit Fowlie to the extent he claimed he was told before the count that he was not supposed to sign anything. Cote testified that he did not expect documents to be signed and admitted that he did not tell Fowlie he could not sign the recognition agreement. (Tr. 285, 294–295, 318-319)

ANALYSIS

The Respondent has defended against the complaint allegations on the grounds that it did not have an obligation to recognize and bargain with the Union. The Respondent has not presented any independent defense to the failure to furnish information allegations. For reasons discussed below, I find that Respondent had an obligation to bargain with the Union as of March 20. Accordingly, I also find that the Respondent failed to furnish information as alleged in the complaint.

RESPONDENT'S REFUSAL TO RECOGNIZE AND BARGAIN WITH THE UNION

The Respondent is Bound by the Card Check Agreement

An employer's unambiguous agreement to recognize a union on the basis of a showing of majority support other than an election creates a bargaining obligation on the part of that employer. Parole evidence regarding an employer's intent to the contrary is not relevant and may not be used to rebut the unambiguous contractual language. *Century Restaurant and Buffet, Inc.*, 358 NLRB 143, 158-159 (2012) (employer has an obligation to bargain with union and parole evidence rule applies where owner signed an unambiguous agreement recognizing union pursuant to card check); *One Stop Kosher Supermarket, Inc.*, 355 NLRB 1237, 1242 (2010) (employer bound by unambiguous recognition agreement executed by its agent on the basis of cards procured by the union). As demonstrated in *Century Restaurant and Buffet* and *One Stop Kosher Supermarket,* the recognition agreement need not expressly state that the employer will forgo and waive its right to an election for that agreement to be binding and impose a bargaining obligation. Id.

Here, the March 20 Card Check Agreement (i.e., a recognition agreement) is unambiguous in stating that the Respondent recognized the Union as the bargaining

representative of the Piscataway unit and that such recognition was based upon the determination by a neutral party that a majority of unit employees signed authorization cards designating the Union as their bargaining representative. (J. Exh. 1) The recognition agreement was similar in form and substance to the recognition agreements at issue in *Century Restaurant and Buffet* and *One Stop Kosher Supermarket*. Thus, as in those cases, the Respondent is bound by the March 20 recognition agreement and the parole evidence rule applies unless Fowlie was not an agent of the Respondent with actual or apparent authority to sign the agreement, or the agreement was the result of "fraud in the execution." *Sheehy Enterprizes, Inc.*, 353 NLRB 803 (2009).

Fraud in the Execution

Fraud in the execution occurs when "a misrepresentation as to the character or essential terms of a proposed contract induces conduct that appears to be a manifestation of assent by one who neither knows nor has reasonable opportunity to know of the character or essential terms of the proposed contract." *Horizon Group of New England*, 347 NLRB 795, 797 (2006) quoting *Restatement (Second) of Contracts § 163 (1981*). See also *Sheehy Enterprizes, Inc.*, 353 NLRB at 803-804. "In other words, fraud in the execution (a.k.a. 'fraud in factum') occurs when a misrepresentation is made which induces a party [to] believe that he is not assenting to any contract or that he is assenting to a contract entirely different from the proposed contract." Id.

The evidence does not establish fraud in the execution of the Card Check Agreement. On March 20, along with the recognition agreement, Fowlie and Fisher signed an additional agreement that stated, in part, "No other union has shown any interest in the bargaining unit herein involved within the past calendar year." Although this was not accurate, Fisher did not misrepresent any facts to Fowlie. Fowlie knew the statement was inaccurate. Further, the previous interest of another union in the bargaining unit is not an essential term or relevant to the legitimacy of the recognition agreement. Accordingly, the recognition agreement was not the result of fraud in the execution.

Agency Status of Fowlie

The Board applies the common-law principles of agency in determining whether a person is an agent of a company. *L.B.&B Associates, Inc.*, 346 NLRB 1025, 1029 fn. 17 (2006). The burden of establishing an agency relationship is on the party asserting it. *Tyson Fresh Meals, Inc.*, 343 NLRB 1335, 1336 (2004). The authority of an agent "may be actual or apparent, and the principal may create either type of authority expressly or by implication." *International Brotherhood of Electrical Workers, Local 98, AFL-CIO*, 342 NLRB 740, 741 (2004). Actual authority is created by the principal's manifestation of authority to the agent and apparent authority is created by the principal's manifestation of authority to a third-party. Id. citing *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446 fn. 4 (1991). "Further, as described in Section 2(13) of the Act, a principal is liable for his agent's actions, even if the principal did not authorize or ratify the particular acts." Id. at 742. Section 2(13) of the Act states:

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

For the reasons discussed below, I find that Fowlie had actual and apparent authority to

sign the recognition agreement and impose a bargaining obligation on the Respondent.[12]

Apparent Authority

"Apparent authority is established when the principal's manifestations to a third party supply a reasonable basis for the third party to believe that the principal authorized the alleged agent to do the acts in question." *L.B.&B Associates, Inc.*, 346 NLRB 1025, 1029 fn. 17 (2006). "Under this concept, an individual will be held responsible for actions of his agents when he knows or 'should know' that his conduct in relation to the agent is likely to cause third parties to believe that the agent has authority to act for him." *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446 fn. 4 (1991). A finding of apparent authority "does not turn on whether [the alleged agent] was acting pursuant to specific instructions by the Respondent; rather, it turns on whether the Respondent placed [the alleged agent] in a position in which employees could reasonably believe that he was speaking on behalf of management." *Faccina Construction Co.*, 343 NLRB 886, 887 (2004).

Fowlie's title of human resources manager is the first indicia of his apparent authority. See *Enterprise Aggregates Corp.*, 271 NLRB 978, 984 fn. 18 (1984); *Sears Roebuck De Puerto Rico*, 284 NLRB 258, 258-259, 270 (1987). The Respondent does not deny that the Regional human resources manager (i.e., Cote) had authority to sign the recognition agreement in question. Cote and Fowlie have the same title, except Fowlie's authority is limited to the Piscataway facility (the facility involved herein). The Respondent has no other human resources personnel at Piscataway and the recognition agreement concerns no plant other than Piscataway. Thus, the Union would have no way of knowing that Fowlie, as a human resources manager like Cote, did not have authority to sign a recognition agreement for the facility within his jurisdiction.

Second, Fowlie was designated by the Respondent as the "responsible official" who signed the notice posting in unfair labor practice case 22-CA-225389, just a little over 3 months before the card check. The letter from the Regional office to the Respondent and the Union, which enclosed the notice posting, was addressed to Fowlie as the Respondent's representative. It is reasonable to presume that the Region's designation of Fowlie as the recipient was based on communication to the Region by the Respondent. That Fowlie was sent and signed the notice as a "responsible official" of the Respondent would indicate to the Union that he had authority to sign documents of legal consequence (like the recognition agreement).

The substantive connection between the settlement notice posting and the Card Check Agreement also presents a certain inherent logic that would tend support a finding of apparent authority. The settlement served to void the Piscataway contract and the recognition provision therein because the Union had not demonstrated majority support among the unit employees. Fowlie signed a notice posting which represented that the Respondent would not deduct union dues from a union that did not have majority support. Fowlie was present at a card check in which the Union demonstrated to the satisfaction of a neutral third party that it did enjoy such majority support. It would stand to reason, from the Union's perspective, that the manager who confirmed the Respondent's intention to avoid recognizing a union without majority support would be the same manager to confirm that the Union demonstrated such a majority.

Third, the notice posting is not the only document that Fowlie has signed on behalf of the

[12] Since I find that Fowlie was an agent within the meaning of Section 2(13) of the Act, I do not address the issue of Fowlie's supervisory status under Section 2(11) of the Act.

Respondent. Fowlie admittedly creates and signs employee discharge and disciplinary records. Those letters constitute the Respondent's only documentation of such adverse employment actions. Fowlie claimed he signs such documents "as a witness," but that characterization is inaccurate.[13] Fowlie did not witness another manager sign these letters, as a person might witness the signing of a will. Rather, it was Fowlie who was responsible for documenting the discipline on behalf of the Respondent. Further, since Gordon dealt with Fowlie in connection with a discharge grievance, it is reasonable to believe that the Union was aware of Fowlie's authority in this regard.

Fourth, I reject the Respondent's factual assertion that Gordon dealt exclusively with Cote before the March 20 card check. Rather, I have credited Gordon to the extent he testified that he had certain dealings with Fowlie before March 20. Thus, I credit Gordon to the extent he testified that he met Fowlie when the initial Piscataway contract was signed, he dealt with Fowlie regarding an employee discharge, he toured the Piscataway facility with Fowlie, he introduced Fowlie to two new shop stewards, and he had a phone conversation with Cote regarding the Operating Engineers' organizing activity with Fowlie on the line. This is not a situation where Fowlie simply appeared out of the blue at the card check with no prior involvement in labor relations and no familiarity with the Union. Rather, Fowlie was known to the Union as a member of the Respondent's human resources team.

Fifth, Fowlie admittedly considered himself a manager and he was the only person sent by Cote to the card check. Indeed, Fowlie was the only member of the Respondent's human resources staff stationed in Piscataway. Fowlie's position as the sole human resource manager at Piscataway and his presence alone at the card check (as arranged by Cote) would convey to the Union that Fowlie was authorized to act on the Respondent's behalf at the Piscataway card count. See *Roswil, Inc.*, 321 NLRB 432, 435 (1996).

Sixth, the fact that Fowlie believed he could sign the Card Check Agreement "For the Company" (since he did sign it) must have demonstrated his apparent authority to do so from the Union's perspective. Fowlie is a human resources manager who works with Cote and who was designated by Cote to attend the card check on behalf of the Respondent. If Fowlie believed he had the authority to sign the recognition agreement, it would have required a remarkable act of insight for the Union to conclude that he was not authorized to do so.

Seventh, the Respondent did not move quickly to retract the agreement on the grounds that Fowlie did not have authority to sign it. See, e.g., *One Stop Kosher Supermarket, Inc.*, 355 NLRB 1237, 1241 (2010). Fowlie called Fisher the next day, but did not leave a detailed message. The Respondent did not reach out to Gordon or any other official by phone, email, or text. Cote communicated with Gordon by phone and text prior to the card check and offered no explanation why he did not immediately attempt to contact Gordon for the purpose of advising the Union that Fowlie did not have authority to sign the recognition agreement. In fact, Cote did not testify that he told the Union, during the March 26 conference call, that Fowlie was not an agent of the Respondent and had no authority to sign the recognition agreement. According to Cote, on March 26, he and Griffin merely complained that the Respondent was not provided a copy of the agreements in advance, did not know anything had to be signed, and believed the

[13] Although I reject Fowlie's characterization of his involvement in discipline as limited to that of a "witness," his signing of discipline in such a capacity would still tend to support a finding of agency. See *Packer Industries*, 226 NLRB 182, 193 (1997) (Respondent held out individual as an agent where individual signed employee warning notice as a witness).

card check was just an internal Union verification of its majority support.[14] The Respondent's failure to immediately and effectively repudiate the appearance that Fowlie had authority to sign the Card Check Agreement supports a finding of apparent authority. Id.

Finally, although Cote may not have expected Fowlie to sign anything at the card check on March 20, his internal subjective understanding in this regard does not negate the Respondent's external manifestation of Fowlie's general authority to do so. Likewise, although Fowlie may have had certain internal subjective doubts and concerns about whether he should sign the agreement, he did not say he could not sign the agreement.[15] Indeed, Fowlie signed the agreement. Under the totality of the circumstances, the Respondent objectively manifested to the Union a reasonable basis to believe that Fowlie had authority to sign the Card Check Agreement following a neutral third-party card check that demonstrated the Union's majority support. As the Respondent should have realized that it impliedly created such a belief, it is bound by the unambiguous recognition agreement that Fowlie signed.

Actual Authority

"It is well established that . . . actual authority refers to the power of an agent to act on his principal's behalf when that power is created by the principal's manifestation to him . . .." *Elevator Constructors, Local 2 (Kone, Inc.)*, 349 NLRB 1207, 1209 (2007). "[L]ike other issues of fact, the existence of actual authority may be proved by circumstantial as well as direct evidence." *One Stop Kosher Supermarket, Inc.*, 355 NLRB 1237, 1240 (2010) citing *Thunderbird Hotel*, 152 NLR 1416, 1424 (1965).

Although Cote and Fowlie both testified in a conclusory fashion that Fowlie did not have authority to sign agreements on behalf of the Respondent, they did not establish facts which establish the same. Fowlie admitted that he did not recall Cote specifically telling him what authority he did *not* have. Rather, Fowlie testified that he learned of his authority over time as Cote trained him. We know that Cote authorized Fowlie to sign the notice posting in case 22-CA-225389 and did not specifically tell Fowlie he was not authorized to sign the recognition agreement or other documents of legal consequence. Thus, Cote effectively conveyed to Fowlie that he was authorized to sign documents like the Card Check Agreement.

As noted in the previous section on apparent authority, there is a substantive continuity in Fowlie's execution of the recognition agreement on behalf of the Respondent. Fowlie signed the settlement notice which reflected the adverse legal consequence of voluntarily recognizing a union without majority support. It makes sense, therefore, that a person in Fowlie's position would believe he was authorized to sign an agreement confirming the Respondent's voluntary recognition of the Union once it demonstrated a majority.

Beyond the notice posting in case 22-CA-225389, Fowlie was routinely tasked with signing discharge and disciplinary letters to employees on behalf of the Respondent. These letters were the only writings that reflected the Respondent's disciplinary action. Thus, it was

---

[14] Rather, Cote left it to an alleged nonagent (Fowlie) to, on behalf of the Respondent, in an email to Fisher, disclaim his authority to sign the recognition agreement. Ironically, it was this type of deference to Fowlie which created his appearance of authority in the first place.

[15] In this regard, I have not credited Fowlie to the extent he testified that, before the card check, he was told "not to sign anything." Likewise, although I do not find it particularly significant, I do not credit Fowlie to the extent he claimed he told the Union representatives he felt "uncomfortable" signing the recognition agreement .

Fowlie's function to document the company's action with respect to personnel matters. The documentation of the Respondent's recognition of the Union as the bargaining representative of unit employees is a task that falls within this same general scope of authority.

The fact that Fowlie signed the recognition agreement "For the Company" indicates that the Respondent effectively communicated to him that he had the authority to do so. Fowlie claims he did not leave the room before signing the Card Check Agreement and did not call Cote to confer. If Fowlie was confused about his authority to sign the recognition agreement, he could have called Cote for assistance. Indeed, Fowlie admittedly called Cote before and after the card check with regard to other matters. Additionally, in his March 25 email to Fisher, Fowlie indicated that it was only "[a]fter further consideration and speaking internally with my superiors" that he was rescinding his signature on the agreements he signed at the card check. Thus, Fowlie did not determine that he did not have authority to sign the agreements until after the card check. If Fowlie, who was hired, trained by, and worked with Cote, thought he had the authority to sign the recognition agreement "For the Company," it stands to reason that, as of March 20, Cote conveyed to Fowlie that he was authorized to do so.

Accordingly, I find that Fowlie was an agent of the Respondent with actual authority to sign the Card Check Agreement and thereby obligate the Respondent to bargain with the Union as the representative of the Piscataway unit.

Evidence Beyond the Card Check Agreement Supports the Finding of Violations

I would find that the Respondent had a duty to bargain with the Union as of March 20 even if the parole evidence rule did not apply and evidence other than the Card Check Agreement were considered. The Board has long held that an employer will not be found to violate Section 8(a)(5) of the Act by refusing to accept union-proffered evidence of majority status other than the results of a Board election. *Linden Lumber*, 190 NLRB 809 (1972). Thus, "an employer has a right to a Board election to resolve the issue of majority status" and, "[a]bsent a clear agreement to forgo that right, the employer does not violate Section 8(a)(5) by insisting upon an election." *Jefferson Smurfit Corp.*, 331 NLRB 809, 809 (2000). On the other hand, "an employer who agrees to have majority status determined by a means other than a Board election may not thereafter breach its agreement, refuse to bargain, and insist upon an election because of dissatisfaction with the agreed-upon method." *Idaho Pacific Steel Warehouse*, 227 NLRB 326, 330 (1976).

As discussed above, the Card Check Agreement, alone, effectively demonstrates that the Respondent agreed to have the Union's majority status determined by card check instead of an election. This recognition agreement is binding and not rendered ambiguous simply because it does not expressly state that the employer waived its right to refuse evidence of majority status other than an election. See *Century Restaurant and Buffet, Inc.*, 358 NLRB 143, 158-159 (2012); *One Stop Kosher Supermarket, Inc.*, 355 NLRB 1237, 1242 (2010). Thus, the parole evidence rule applies and the Card Check Agreement is dispositive. However, even if the parole evidence rule did not apply and parole evidence were relevant, such evidence would not render the Card Check Agreement entirely irrelevant. Rather, that recognition agreement would still provide powerful support for a finding that the Respondent intended to voluntarily recognize the Union once the card count demonstrated that the Union enjoyed majority support.

Beyond the Card Check Agreement itself, Gordon effectively asked Cote to conduct a card check in lieu of an election, and Cote agreed. As discussed above, I do not credit Cote's testimony to the effect he claimed that the Respondent always wanted an election and never contemplated voluntary recognition of the Union. The Respondent did voluntarily recognize

Local 381 as the bargaining representative of the Piscataway unit when it signed the Piscataway contract. Although the Piscataway contract and the recognition provision therein were ultimately rescinded because Local 381 failed to demonstrate majority support, Gordon expressed a desire to cure that defective recognition by card check and then negotiate a new contract. Gordon explained to Cote that the Union wanted to avoid any conflict that might arise during an election and avoid the intervention of another union in such an election. Cote agreed to this procedure and agreed that the Respondent would remain neutral while the Union solicited authorization cards from employees. Having agreed to accept the results of a card check as a showing of majority support in lieu of an election, the Respondent was bound by the results of that card check and could not lawfully rescind recognition after March 20.

In so finding, I do not rely exclusively on the credited testimony of Gordon. In my opinion, on March 17, by text, Gordon and Cote effectively confirmed that the card check would be conducted in lieu of an election. (G.C. Exh. 2) This March 17 text exchange occurred as follows:

> Gordon (March 17, 2:35 PM): Mathieu, if you don't mind, I'd like to reach out to the Federal Mediation & Conciliation Service (FMCS), which is a neutral Government agency, and see if they might have any of their Commissioners who might be available to do the actual card count. That way it's strictly on the up & up, and none can accuse either side of doing anything inappropriately. Normally, I would just count with Alex, but given the past history with the Labor Board (which the FMCS is *no* part of), I think we might want to err on the side of caution. Thoughts?
>
> Cote (March 17, 4:53 PM): I don't see downsides.

Thus, Gordon effectively stated that the March 20 card count should be conducted in such a manner as to avoid the legal defect which served to negate the voluntary recognition in the Piscataway contract. Cote testified that he understood what Gordon was referring to by "the past history with the Labor Board." With that understanding, Cote agreed to Gordon's proposal. This exchange supports a finding that the Respondent committed to a process of accepting the results of the card count as the basis for voluntary recognition in place of an election.

Contrary to the contention of the Respondent, I do not find Cote's other March 17 text, below, to be exculpatory (G. C. Exh. 2):

> Cote (March 17, 11:01 AM): Got your message. I talked to Alex and he will be there on Monday to count with you and maybe to tell you which one are from active/terminated employees. We will discuss next step with our colleagues early this week and get back to you. Thank you.

The Respondent contends that, by this text, "Cote informed Gordon that he would have to consult internally about what, if any, steps Cascades would take after the count." (R. Brief p. 26) When asked about the text, Cote testified that "[Gordon] would have to reach out to me and tell me what would be the count, and what would be the majority, was it a vest majority, was it a small majority. And then we would have other discussion[s], [Gordon] and I." (Tr. 289) This testimony makes little sense and I do not credit it. The text states that Cote would "get back" to Gordon, not the opposite. Further, and more importantly, Cote's text was sent on Sunday, March 17 and referenced discussions he would have with his colleagues "early this week," (i.e., March 18 or 19), *before* the March 20 count. Cote's testimony that the text concerned what he and Gordon would discuss after March 20 regarding the results of the count is implausible as

Cote and his colleagues would not have known those results when they conferred earlier in the week and could not "get back" to Gordon regarding the same.

Further, Cote's March 17 text does not otherwise suggest that the Respondent did not agree to be bound by the results of the card check. Cote testified, regarding the text, "I was saying to my colleagues basically that the USW were at a point where they wanted to make verification of their cards and that we were going to have more discussion in the upcoming weeks." (Tr. 289) Thus, Cote admittedly understood that the Union intended to verify its card majority to the Respondent's satisfaction. Cote's understanding in this regard is not surprising since Gordon told him in a March 18 text, "[t]he mediator asks that you have in alphabetic order whatever documents you will be providing to verify signatures." Moreover, Cote's text reference to *pre-March 20* discussions could have, and likely did, simply refer to preparations for the card check. However, if Cote did intend to speak to his colleagues regarding events following the card check and get back to Gordon regarding the same, we do not know the subject of those discussions because Cote did not explain. Those discussions could have concerned contract negotiations. Moreover, Cote's failure to offer a credible narrative (discussed above) regarding the Respondent's alleged desire for an election, as opposed to voluntarily recognition, renders his ambiguous testimony regarding an ambiguous March 17 text even less compelling.

I also find uncompelling the Respondent's reliance on Fowlie's agreement to leave the conference room while Whelan counted the cards. Cote fully expected Fowlie to be present and participate in the count. As noted above, Cote texted Gordon, "I talked to Alex and he will be there on Monday to count with you . . .." That Fowlie agreed to leave the room on March 20 and let a neutral third-party conduct the count in his absence does not suggest, as the Respondent contends, that the Respondent did not intend the results of the count to be binding. See *Harding Glass Industries, Inc.*, 533 F.2d 1065, 1069 (8th Cir. 1976) enforcing 216 NLRB 331 (1975) (Court sustained finding that manager agreed to card check by impartial third party and authorized an employee to represent him at that proceeding, regardless of any evidence that the union took advantage of the manager by proceeding with the card check in his absence).

I do find it telling of the parties' intent that the Respondent did not make any mention of its alleged desire for an election until *after* the card check was conducted. On June 7, 2018, the parties signed a Piscataway contract that contained a recognition provision. In November 2018, the contract was rescinded as a result of a Board settlement, but Gordon advised Cote that the Union intended to collect authorization cards to be used in a card check. Gordon explained to Cote why a card check was preferrable to an election, and Cote agreed to it. Cote further agreed that the Respondent would remain neutral while the Union solicited cards. In March, the parties arranged for a card check to be conducted by a neutral third-party "given the past history with the Labor Board . . .." In the parties subsequent communication from March 21 to March 26, the Respondent did not express a desire for an election. Indeed, the record is devoid of any evidence that the Respondent expressed a desire for an election before April 24, when Cote mentioned it in a letter to Gordon. Rather, the parties' communication dealt exclusively with the collection of cards and a card count.

In his April 24 letter to Gordon, although Cote made certain self-serving representations regarding the Respondent's prior intent, his description of events actually indicated that the Respondent decided *after* the card count that it wanted an election. Cote stated, "[n]ow, equipped with these slim margins" of a Union majority (51 percent) as demonstrated by the card check and, "[b]ased upon the feedback received from several employees, a secret ballot NLRB-run vote is the only fair and equitable way to allow our employees (without any undue influence) to decide whether they want union representation." (J. Exh. 6) Likewise, Cote testified that the Respondent decided an election was the right way for employees to determine whether they

wanted representation "after what happened on March 20th[.]" (Tr. 327–328) However, the Respondent, having agreed to a card check in lieu of an election, was not at liberty to reject the results of the card check after it was conducted. *Research Management Corp.*, 302 NLRB 627, 638 (1991) (employer bound by agreement to recognize union on basis of cards where the employer failed to communicate intention to the contrary until after the card check).

For reasons discussed in the credibility section of this decision, I do not credit Cote to the extent he claimed he did not know a card check could establish majority support. However, I would find that the Respondent had a bargaining obligation regardless of Cote's understanding in this regard. It is not Cote's subjective state of mind that is relevant, but the objective manifestation of the Respondent's contractual intent. See *Mk-Ferguson Co.*, 296 NLRB 776, 776 fn. 2 (1989) (whether a meeting of the minds was reached is determined not by the parties' subjective inclinations, but by their intent as objectively manifested in what they said to each other). In *Harding Glass Industries, Inc.*, 533 F.2d 1065, 1069 (8th Cir. 1976), the Court stated as follows:

> It is true that the record suggests that [the manager] was not aware that a card count favorable to the Union could serve as a basis for the Union to avoid an election. However, as the Ninth Circuit observed in rejecting a similar argument in *Snow [& Sons*, 134 NLRB 709, 710 enf'd 308 F.2d 687, 689 (9th Cir. 1962)], ["](i)t (is not) important whether an employer appreciates in advance that a card count may provide information which will undermine his right to insist on a Board election. (*Snow v. NLRB*, supra, 308 F.d at 692.)["] We agree with this analysis. The verification procedure approved by the employer gives that employer accurate information, but the employer need not appreciate in advance the obligations that may arise from knowledge so gained.

See also *Richmond Toyota*, 287 NLRB 130, 131 (1987) (employer vice president had authority to recognize union regardless of her responsibility for or knowledge of labor relations).

While I fully believe Cote knew a card count favorable to the Union could serve as a basis for recognition, his subjective understanding in this regard is, as in *Harding Glass Industries*, irrelevant. The Respondent objectively manifested an agreement to a card count by a neutral third-party in lieu of an election and was presented with a tally of the count which proved the Union's majority status. At that point, the Respondent could not lawfully refuse to recognize the Union as the bargaining representative of the Piscataway unit.

Based upon the foregoing, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by rescinding recognition and refusing to bargain with the Union as the bargaining representative of the Piscataway unit.[16]

RESPONDENT'S REFUSAL TO FURNISH INFORMATION

The Respondent has stipulated that, to the extent it is found to be obligated to recognize and bargain with the Union as the bargaining representative of the Piscataway unit, the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the bargaining representative of the unit. Accordingly, having found that the Respondent has had an obligation to bargain with the Union since March 20, I further find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the following information:

March 25 Information Request

1. An employee census, showing the names, classification, department, shift, date of hire, and rate of pay of all employees in the Piscataway bargaining unit.
2. Copies of all OSHA Log 300, 300A and 301 forms for the period that the facility has been operating.
3. A listing of all employees who have been separated from employment, with the reason for separation, during the period December 1, 2018 to present.
4. Copies of Health Insurance Plans, Retirement Plans, and Thrift Plans (401-K, Employee Stock Ownership Plans, etc.) currently being offered to bargaining unit employees.
5. Shift schedules for the next three months.

May 21 Information Request

1. A listing of all employees, including their name, address, date of hire, job title.
2. A separate list of all employees who have been separated from employment, with the reason for separation, during the period March 20 to present, including the information requested in item 1.

[16] Relying largely on *J. Greenbaum Tanning Co.*, 49 NLRB 787, 791-792 (1943), the Respondent raised an additional defense that the Union's authorization cards must be invalidated to the extent they were obtained during the settlement notice posting period in cases 22-CA-225389 and 22-CB-225412. I reject this defense. In *J. Green Greenbaum Tanning*, the employer violated Section 8(a)(2) by paying an incumbent union president for his organizational activity, thereby rendering the president an agent of the employer. The employer did not renounce the agency status of the union president while he engaged in organizational activity on behalf of a successor union during the posting period for the 8(a)(2) violation. The Board refused to certify the successor union as the bargaining representative of the unit. Here, however, the Union's activity in soliciting authorization cards was designed to cure the unfair labor practices resulting from the Respondent's recognition of the Union without a showing of majority support. The employer notice in case 22-CA-225389 stated, "WE WILL NOT deduct union dues on behalf of Local 381 United Steel Workers [or] any other labor organization without their support of a majority of the employees." (G.C. Exh. 8) The union notice in case 22-CB-225412 stated, "WE WILL NOT request that Cascades or any other Employer deduct union dues from employees pay checks on behalf of Local 381 United Steel Workers without the support of a majority of the employees we seek to represent." (R. Exh. 1) The Union's solicitation of cards to prove majority support is in no way a continuation of the unfair labor practices or inconsistent with the representations in these notice postings.

3. A separate list of all employees who have been hired into the Bargaining Unit since March 20.

February 13, 2020 Information Request

1. A list of all Piscataway bargaining unit employees separated from employment since March 20 with the reason(s) for the separation, including employee name(s), address(s), date(s) of hire, and job title(s).
2. A list of all Piscataway bargaining unit employees who have been disciplined since March 20, with the reason(s) for the discipline, including employee name(s), address(s), date(s) of hire, and job title(s).
3. A list of all employees who have been hired into the bargaining unit since March 20, 2019, including employee name(s), address(s), date(s) of hire, and job title(s).

CONCLUSIONS OF LAW

1. The Respondent, Cascades Containerboard Packaging – Piscataway, a Division of Cascades Holding US, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Respondent's human resources manager, Alex Fowlie, has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by:

(a) Since March 20, refusing to recognize and bargain with the Union as the exclusive bargaining representative of the following unit:

> All full-time and regular part-time Production and Maintenance Employees employed by the Company at its facilities located at Turner Place in Piscataway, New Jersey; excluding professional and confidential employees, and supervisors as defined by the National Labor Relations Act.

(b) Failing and refusing to furnish the Union with the information requested in letters dated March 25, May 21, 2019, and February 13, 2020.

5. The unfair labor practices committed by the Respondents affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent, Cascades Containerboard Packaging – Piscataway, a Division of Cascades Holding US, Inc., engaged in certain unfair labor practices, I shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent unlawfully failed and refused to recognize and bargain with the Union pursuant to its voluntary recognition agreement and demonstration

of majority support, I shall order the Respondent to do so consistent with its rights and obligations under the Act. See *Alpha Associates,* 344 NLRB 782 (2005); *Red Coats*, 328 NLRB 205 (1999). In addition, having found that Respondent failed and refused to provide the Union with all of the relevant and necessary information it requested on March 25, May 21, 2019, and February 13, 2020, I shall order the Respondent to provide the information to the Union. See, e.g., *TEG/LVI Environmental Services, Inc.*, 328 NLRB 483 (1999). Finally, I shall require the Respondent to post the standard notice at its facility advising the employees of this decision and order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The Respondent, Cascades Containerboard Packaging – Piscataway, a Division of Cascades Holding US, Inc., Piscataway, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with the Union, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC, as the exclusive bargaining representative of employees in the following appropriate unit:

> All full-time and regular part-time Production and Maintenance Employees employed by the Company at its facilities located at Turner Place in Piscataway, New Jersey; excluding professional and confidential employees, and supervisors as defined by the National Labor Relations Act.

(b) Refusing to provide information to the Union that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of unit employees.

(c) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive bargaining representative of unit employees concerning their wages, hours, and other terms and conditions of employment.

(b) Provide the Union with all the information it requested in letters dated March 25, May 21, 2019, and February 13, 2020.

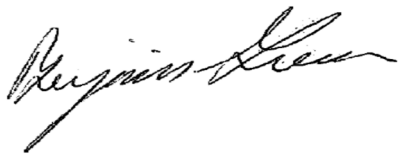
(c) Within 14 days after service by the Region, post at its Piscataway, New Jersey facility copies of the attached notice marked “Appendix.” Copies of the notice, on forms

[17] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, copies of the notice to all current employees and former employees employed by the Respondent at any time since March 20, 2019.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C., June 15, 2021



Benjamin W. Green
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (Union) as the recognized exclusive bargaining representative of employees in the following appropriate unit:

> All full-time and regular part-time Production and Maintenance Employees employed by the Company at its facilities located at Turner Place in Piscataway, New Jersey; excluding professional and confidential employees, and supervisors as defined by the National Labor Relations Act.

WE WILL NOT refuse to provide information to the Union that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union regarding the wages, hours, and other terms and conditions of employment of unit employees.

WE WILL provide the Union with all of the information that it requested in letters dated March 25, May 21, 2019, and February 13, 2020, which is relevant and necessary to the performance of the Union's duties as the exclusive bargaining representative of unit employees.

Cascades Containerboard Packaging – Piscataway, a Division of Cascades Holding US Inc.
(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

20 Washington Place, Fifth Floor, Newark, NJ 07102-3110-0104
(973) 645-2100, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-240134 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (212) 264-0300.